

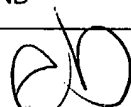


# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,190	05/15/2001	Raymond Clarke	13282-1	9310
7590 03/30/2004				
Sheldon & Mak 225 South Lake Avenue, Suite 900 Pasadena, CA 91101		EXAMINER WEINSTEIN, STEVEN L.		
		ART UNIT PAPER NUMBER		
		1761		
DATE MAILED: 03/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/858,190	<b>Applicant(s)</b> CLARKE, RAYMOND	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/27/03
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Applicant requests that signed copies of the IDS forms be returned. This application has now been scanned and is no longer in paper form. From a review of the scanned application (image file wrapper) some IDS forms were apparently initialed to the extent that references were present. These forms were apparently not mailed. Also, it is not clear how many of the large volume of references cited in the IDS have been scanned. It is suggested that in the interest of a complete examination, and if it is not too much of a burden, that applicant resubmit the IDS' with the accompanying copies of references.

Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson ('875) in view of Antoon ('331), further in view of Badran et al ('544), Badran ('542), DeMoor ('293) who are applied for the reasons given in the last Office action mailed 6/23/03, further in view of Scolaro (Ep 752378).

Claim 11 now recites that the bananas have not reached their climacteric and a packaging atmosphere that contains 14-19% oxygen, less than 10% carbon dioxide and the permeability relationship of the sealed container.

As noted previously, all of the references discuss the preservation of produce including bananas in gas permeable packaging, that the way to slow down ripening is to slow down respiration, and the way to slow down respiration is to provide the produce including bananas with an oxygen level that is lower than ambient and a carbon dioxide level that is higher than ambient. The art taken as a whole, i.e. each of the references, also teaches that respiration, and thus the effect it has on gas levels, is a function of weight, temperature, type of produce, film permeability, etc. and that these variables can be manipulated to provide optimal gas atmospheres for preservation and ripening. As noted previously, given this background of

teachings throughout the art taken as a whole, to provide particular gas permeabilities and thus gas atmospheres for a particular product such as bananas is considered to have been a routine determination fairly directed by the art taken as a whole. Scolaro is relied on as further evidence of the conventionality of providing packaging with pre-selected permeability and gas atmospheres, for produce including bananas. Note that Scolaro discloses oxygen and carbon dioxide concentrations within the recited range of unripe bananas. Similarly, in regard to claim 16, the art taken as a whole including Scolaro teaches packaging unripened bananas. Claim 16 appears to be reciting two points in time. That is, claim 16 recites that the bananas in the sealed container have passed their climacteric but also recites that the bananas were green when they were sealed. Claim 16 is a product claim, not a method claim, so that the article must be looked at at only one point in time. In any case, Anderson and Anton disclose bananas ripening at low oxygen high carbon dioxide concentrations relative to ambient.

All of applicant's remarks have been fully and carefully considered but are not found to be convincing. As noted above, all the references cited teach determining the permeabilities of the packaging material for the product and gas atmosphere desired. The gas atmospheres necessary to slow down ripening for longer product life are notoriously conventional in the art. Applicant selects the known manipulatable variables such as oxygen and carbon dioxide and even ethylene permeability to impart a certain package atmosphere which tends to be low oxygen and high carbon dioxide relative to ambient so as to cause storage and ripening of the produce. As such, applicant is doing what the art taken as a whole fairly teaches. The specific variables, if they do vary in their specific quantities, are a function of the product and conditions selected.

The examiner will make the appropriate office aware of the petition to Issue Correct filing receipt.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

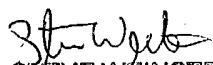
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday thru Friday from 6:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Weinstein/LR  
March 18, 2004

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
3/25/04